

Consideration of preliminary adoption of amendments to 312 IAC 4 that governs the Division of Law Enforcement; LSA Document #13-448; Administrative Cause No. 12-119L

For consideration on preliminary adoption are amendments to 312 IAC 4, which governs the DNR's Division of Law Enforcement. Included are proposed amendments to the definitions of "conservation officer", "probationary officer", and "temporary assignment" and a new definition for "spot appointment". The definition of "deputy director" would be repealed, and references to deputy director would be removed. The prerequisites for application to become a conservation officer would be amended. The review requirement for general orders and standard operating procedures would be removed. Modifications would be made to the insurance committee to cause conformance of current practices and the rule.

Law Enforcement Consolidated Amendments
January 2, 2014

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #13-448

DIGEST

Amends 312 IAC 4 which governs the Division of Law Enforcement of the Department of Natural Resources, to amend definitions, remove references to the deputy director, amend prerequisites for application to become a conservation officer, remove review requirements for general orders and standard operating procedures, clarify the opportunities for administrative review, make other amendments to Division governance, and make technical changes. Effective 30 days after filing with the Publisher.

**312 IAC 4-1-4; 312 IAC 4-1-5; 312 IAC 4-1-11;
312 IAC 4-1-17; 312 IAC 4-1-22; 312 IAC 4-4-3;
312 IAC 4-4-4; 312 IAC 4-4-6; 312 IAC 4-5-2;
312 IAC 4-5-4; 312 IAC 4-6-6**

SECTION 1. 312 IAC 4-1-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-1-4 "Conservation officer" defined

Authority: IC 14-9-8-3; IC 14-10-2-4

Affected: IC 9-13; IC 14-8-2; IC 31-3.5

Sec. 4. "Conservation officer" ~~means a sworn officer employee of the division, as established by IC 14-9-8-1, has the meaning set forth in IC 14-8-2-5~~ and is a law enforcement officer under ~~IC 35-41-1-17~~ **IC 9-13-2-92 and IC 31.5-2-185.** (*Natural Resources Commission; 312 IAC 4-1-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 2. 312 IAC 4-1-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-1-11 "General order" defined

Authority: IC 14-9-8-3; IC 14-10-2-4
Affected: IC 14-9-8

Sec. 11. "General order" means a permanent written directive to govern the conduct of all employees that is issued with the approval of the division director, ~~the deputy director,~~ and the director. (*Natural Resources Commission; 312 IAC 4-1-11; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3934; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 3. 312 IAC 4-1-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-1-17 "Probationary officer" defined

Authority: IC 14-9-8-3; IC 14-10-2-4
Affected: IC 14-9-8

Sec. 17. "Probationary officer" means an officer employee of the division, **who has completed satisfactorily the Indiana Conservation Officer Recruit School and the Indiana Law Enforcement Academy**, with less than one (1) year of service. (*Natural Resources Commission; 312 IAC 4-1-17; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 4. 312 IAC 4-1-22 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-1-22 "Temporary assignment" defined

Authority: IC 14-9-8-3; IC 14-10-2-4
Affected: IC 14-9-8

Sec. 22. "Temporary assignment" means an assignment ~~of less than one (1) year duration and~~, **outside an officer's permanent assignment**, addressed by special order. (*Natural Resources Commission; 312 IAC 4-1-22; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3935; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RF;A readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 5. 312 IAC 4-4-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-4-3 Issuance and effectiveness of orders by the division director

Authority: IC 14-9-8-3; IC 14-10-2-4
Affected: IC 14-9-8

Sec. 3. (a) The division director may issue general orders, special orders, standard operating procedures, administrative procedures, and ~~policy~~ **policies** to assist in the implementation of this article and the function of the division.

(b) The establishment, amendments, or repeal of a general order or a special order is as follows:

(1) Initiated upon the signature of the division director and forwarded ~~through the deputy director~~ to the director for review and approval.

(2) Effective upon distribution to the employees.

(c) All written directives shall include a date of effectiveness. ~~General orders and standard operating procedures shall also have a review date.~~ (*Natural Resources Commission; 312 IAC 4-4-3; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 6. 312 IAC 4-4-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-4-4 Temporary assignments

Authority: IC 14-9-8-3; IC 14-10-2-4

Affected: IC 14-9-8

Sec. 4. (a) A temporary assignment may be made if the duty to be performed will be additional in nature. The division director may, with the approval of the ~~deputy~~ director, designate other grades, classification of ranks, or positions as temporary assignments. Temporary assignments may result in temporary increases in grade, classification of ranks, or position.

(b) The division director may, at any time, return an employee given a temporary assignment to the employee's permanent rank, grade, or position. An action by the division director under this subsection is not a demotion and does not entitle the employee to any recourse.

(c) If a position described in 312 IAC 4-3-2(b) is vacated because of illness, injury, or leave approved to a permanent officer for at least thirty (30) days, and the division director determines the officer is unlikely to return to duty for at least thirty (30) more days, the division director may fill the vacancy with a temporary assignment. (*Natural Resources Commission; 312 IAC 4-4-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA*)

SECTION 7. 312 IAC 4-4-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-4-6 Review of actions resulting in termination, demotion, or suspension of a conservation officer

Authority: IC 14-9-8-3

Affected: IC 4-21.5-5; IC 14-9-8

Sec. 6. (a) **Except as provided in subsection (c)**, a conservation officer whose employment is terminated or who is demoted **or** suspended, ~~or otherwise incurs direct pecuniary loss~~ as a result of a final determination by the division director (or a person designated by the division director) may seek administrative review from the commission under IC 4-21.5 and 312 IAC 3-1.

(b) ~~The department may~~, Through the issuance of a general order, **the division director may** establish a board to provide informal review of any disciplinary action. A determination that is subject to administrative review under subsection (a), and for which informal review is available under this subsection, is not a final determination until the board completes the review and makes a written report of its findings.

(c) ~~The employment of a probationary employee may be terminated~~ Without charges being made under section 5 of this rule **and without a predisciplinary meeting:**

(1) A probationary employee may be terminated. ~~A probationary employee is not entitled to a predisciplinary meeting, administrative review under subsection (a) or informal review under subsection (b).~~

(2) At the will of the division director and subject to approval of the director, an officer who received a spot appointment may be returned to the officer's permanent grade before the spot appointment.

An action under this subsection does not entitle a person to administrative review under subsection (a) or to informal review under subsection (b).

(d) As used in this section, "spot appointment" means a temporary elevation in grade to captain, major, or lieutenant colonel that:

(1) is granted in writing at the discretion of the division director, subject to the approval of the director;

(2) states the permanent grade to which the officer would return; and

(3) takes effect after July 1, 2014.

~~(d)~~(e) A party who is aggrieved by a final agency action of the commission may seek judicial review under IC 4-21.5-5. *(Natural Resources Commission; 312 IAC 4-4-6; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3937; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA)*

SECTION 8. 312 IAC 4-5-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-5-2 Prerequisites for a conservation officer applicant

Authority: IC 14-9-8-3; IC 14-10-2-4

Affected: IC 14-9-8

Sec. 2. A person who wishes to apply to become a conservation officer must meet each of the following requirements in order to be favorably considered:

- (1) Be a United States citizen.
- (2) Possess the strength and agility needed to complete the physical conditioning and psychomotor skills requirements established by the Indiana law enforcement training board under ~~250 IAC 1-3~~ **250 IAC 2-3**.
- (3) Have achieved one (1) of the following:
 - (A) An associate degree (two (2) year program), **evidenced by a certified transcript**, from a college or university accredited by an organization recognized by the ~~Council for Higher Education Accreditation (CHEA)~~ **as evidenced by a certified transcript United States secretary of education at 34 CFR 606.2**.
 - (B) ~~Completed Completion of~~ **Completion of** at least two (2) years toward a bachelor degree (four (4) year program), **evidenced by a certified transcript**, from a college or university accredited by an organization recognized by ~~CHEA~~ **as evidenced by a certified transcript the United States secretary of education at 34 CFR 606.2**.
 - (C) **Four (4) years of honorable United States military service.**
- (4) Be at least twenty-one (21) years of age on the date of appointment.
- (5) Possess a valid driver's license to operate an automobile.
- (6) Be willing, if appointed, to reside and serve any place within Indiana as designated by the division director.
- (7) Demonstrate an ability to swim one hundred (100) yards without stopping and to tread water for at least five (5) minutes.
- (8) Successfully complete physical agility testing.
- (9) **If requested by the division, submit to** and satisfy:
 - (A) Standard psychological testing.
 - (B) **A polygraph examination.**

(Natural Resources Commission; 312 IAC 4-5-2; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA)

SECTION 9. 312 IAC 4-5-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-5-4 Promotion of conservation officers and return to rank of division director following the conclusion of service

Authority: IC 14-9-8-3; IC 14-10-2-4

Affected: IC 14-9-8

Sec. 4. (a) Unless an exception is made by the division director, with the approval of the ~~deputy~~ director, a conservation officer is ineligible for promotion until the conservation officer completes at least three (3) years of service with the division.

(b) This section does not prevent the division, with the approval of the director, from filling a vacancy with a temporary assignment.

(c) The promotion of a conservation **officer** to any rank is made by the division director subject to the approval of the director.

(d) The appointment of the division director from within the division is considered a promotion. Upon the appointment of a succeeding director, the division director is returned to the rank or grade held before unless the division director:

(1) is not physically able to perform the duties of the rank; or

(2) was removed from employment for moral turpitude, a violation of law, or another just cause.

(Natural Resources Commission; 312 IAC 4-5-4; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3938; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA)

SECTION 10. 312 IAC 4-6-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 4-6-6 Insurance committee

Authority: IC 14-9-8-3; IC 14-10-2-4

Affected: IC 5-10-8-6; IC 14-9-8

Sec. 6. (a) The insurance committee is established to assist in the implementation of a common and unified plan of group insurance, **between the conservation officers and the state excise police**, as set forth in IC 5-10-8-6. This committee shall consist of ~~no fewer than five (5) and no more than seven (7)~~ **ten (10) members, five (5) of whom shall be conservation officers and five (5) of whom shall be state excise police.**

(b) ~~The division director~~ **members shall appoint the elect a chair and a vice chair** of the insurance committee.

(c) The insurance committee shall keep conservation officers **and the state excise police** informed of developments concerning insurance coverage and premiums. The committee shall provide each conservation officer **and member of the state excise police** with a copy of the carrier's group health and dental plan. *(Natural Resources Commission; 312 IAC 4-6-6; filed Aug 3, 2001, 11:07 a.m.: 24 IR 3939; readopted filed May 29, 2007, 9:49 a.m.: 20070613-IR-312070145RFA; readopted filed Sep 19, 2013, 10:13 a.m.: 20131016-IR-312130170RFA)*

SECTION 11. 312 IAC 4-1-5 is repealed.